Subject Index

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	3
Argument	7
I	
Even assuming that petitioner has a constitutionally-guaranteed right to effective representation by counsel in civil administrative proceedings, there is no showing that his legal representation here was in fact inadequate	7
II	
There is no constitutionally-guaranteed right to effective representation by counsel in civil administrative proceedings	10
Conclusion	13

Table of Authorities Cited

Cases	Page
Bancroft v. Board of Governors of Registered Dentists, 202 Okla. 108, 210 P. 2d 666 (1949)	12
Borror v. Department of Investment, 15 Cal. App. 3d 531, 92 Cal. Rptr. 525 (1971)	12
Boruski v. Securities & Exchange Comm'n, 340 F. 2d 991 (2d Cir.) (per curiam), cert. denied 381 U.S. 943 (1965)	11
De Angeles v. Roos Bros., Inc., 244 Cal. App. 2d 434, 52 Cal. Rptr. 783 (1966)	9
Dodd v. United States, 321 F. 2d 240 (9th Cir. 1963)	11
Gideon v. Wainwright, 372 U.S. 335 (1963)	11
Goldberg v. Kelly, 397 U.S. 254 (1970)	12
Harris v. Smith, 418 F. 2d 899 (2d Cir. 1969)	12
Henderson v. Hart, 122 Cal. 332, 54 Pac. 1110 (1898)	9

Pages

Hullom v. Burrows, 266 F. 2d 547 (6th Cir.), cert. denied 361 U.S. 919 (1959) 12

Johnson v. United States, 380 F. 2d 810 (10th Cir. 1967) ..10, 11

Kruchten v. Eyman, 406 F. 2d 304 (9th Cir. 1969) 10, 11

Lee v. Dawson, 44 Cal. App. 2d 362 (1941) 9

McGaughy v. Gardner, 296 F. Supp. 33 (E.D. La. 1967) ... 12

Nees v. Securities & Exchange Comm'n, 414 F. 2d 211 (9th Cir. 1969) 11

People v. Fields, 271 Cal. App. 2d 500, 76 Cal. Rptr. 358 (1969) 7

People v. Reeves, 64 Cal. 2d 766, 51 Cal. Rptr. 691, 415 P. 2d 35, cert. denied 385 U.S. 952 (1966) 7

People v. Silva, 266 Cal. App. 2d 165, 72 Cal. Rptr. 38 (1968) 9

Staley v. Unemployment Ins. App. Bd., 6 Cal. App. 3d 675, 86 Cal. Rptr. 294 (1970) 12

Washington v. United States, 297 F. 2d 342 (9th Cir. 1961) (per curiam), cert. denied 370 U.S. 949 (1962) 10

Woodham v. Williams, 207 So. 2d 320 (Fla. Ct. App. 1968) 12

Codes

California Administrative Code, Title 4, Section 143 3

California Business and Professions Code:

Section 24200(a), (b) 2, 3

Section 24200.5(b) 2, 3

Section 25657 ..... 2, 3

California Penal Code Section 303a 3

United States Code, Title 28, Section 1257(3) 2

Constitutions

California Constitution:

Article XX, Section 22 ..... 2, 3

United States Constitution:

Sixth Amendment 10, 13

Fourteenth Amendment 2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1970

No. 1601

MAX LIPKIN,
Petitioner,

vs.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF CALIFORNIA, ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The decision of the California Department of Alcoholic Beverage Control, dated April 30, 1970, is contained in the Appendix to this brief. The decision of the California Alcoholic Beverage Control Appeals Board, dated December 30, 1970, is attached to the Petition for a Writ of Certiorari.

The California Court of Appeal denied petitioner's application for a writ of review on February 3, 1971, without opinion.

The California Supreme Court denied petitioner's application for hearing on March 9, 1971, without opinion.

JURISDICTION

The jurisdiction of this Court is invoked under section 1257(3) of Title 28, United States Code.

QUESTIONS PRESENTED

1. Assuming that petitioner has a constitutionally-guaranteed right to effective representation by counsel in civil administrative proceedings, does the record here demonstrate that his legal representation was in fact inadequate?

2. Is there a constitutional right to effective representation by counsel in civil administrative proceedings guaranteed to petitioner by the due process clause of the Fourteenth Amendment?

STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution.

Article XX, section 22 of the California Constitution; California Business and Professions Code sections 24200(a) and (b), 24200.5(b), and 25657;

California Penal Code section 303a; and section 143 of Title 4 of the California Administrative Code. The pertinent texts of these latter constitutional, statutory, and regulatory provisions are set forth in the petition for a writ of certiorari.

STATEMENT

An accusation was filed on June 16, 1969, by the California Department of Alcoholic Beverage Control seeking discipline against petitioner's on-sale general liquor license for "Mike's Riverboat," a bar located in San Francisco's "Tenderloin District." The accusation charged 23 separate instances of "B-girl" activity, involving the solicitation of customers by petitioner's topless dancers to purchase drinks for the dancers, and the acceptance by these girls of the drinks purchased for them. The accusation charged that this conduct was violative of the following provisions of California law: California Constitution, article XX, section 22; Business and Professions Code sections 24200(a) and (b), 24200.5(b), and 25657; Penal Code section 303a; and Title 4, California Administrative Code, section 143.

Pursuant to petitioner's request, a hearing was held on November 4, 1969. The first witness of the Department of Alcoholic Beverage Control was a Department investigator, William Moss. He testified to being on the premises in several instances when topless dancers clad in panties and see-through tops

had come to his table, asked him to buy them a drink, then subsequently consumed the drink which he had purchased for them (RT 11-36).

Prior to any cross-examination of Mr. Moss, petitioner's retained attorney, R. Jay Engel, examined certain Department investigation reports (Exhibits 2-5) which pertained to other, similar incidents at "Mike's Riverboat" involving Mr. Moss and other Department investigators, and which had been charged in the accusation. After reviewing these other reports, petitioner's counsel stipulated that Mr. Moss's testimony would support the factual allegations contained in certain subcounts of the accusation (RT 36-39). Further, he stipulated that other witnesses, if called, would testify in support of the allegations in the remaining subcounts of the accusation (RT 36-39). It was further stipulated that, in each instance of charged B-girl activity, the beverage was an alcoholic beverage (RT 36-39).

Petitioner's attorney then rested his case, choosing not to cross-examine investigator Moss or to call any witnesses (RT 40-41).

On November 10, 1969, petitioner's new attorney, Rudolph Hoffman, wrote the hearing officer and asked that the matter be reopened for further hearing and that the stipulation be set aside (Exhibit 6). The hearing officer immediately granted this request, and set December 3, 1969, as the date for petitioner to make his motion to reopen and present any evidence and points and authorities in support of that motion (Exhibit 6).

At the December 3, 1969, hearing on petitioner's motion to reopen, the hearing officer expressly asked petitioner's new attorney to make an offer of proof regarding what he intended to accomplish if the case were reopened. Counsel's response was as follows:

> "All right, Mr. Hearing Officer. There are direct statements involved in the stipulated facts allowed in, that persons other than the agents were biased, I would say, and have a direct interest in this matter. The other interested and direct witnesses in this matter would be the persons involved who were identified by agents as saying certain statements. Also, there is the accusation that there was certain monies deposited in a certain manner. Well, again, the key witnesses would be the persons involved who have been identified by the agents. Mr. Lipkin, who is the licensee, has the right to come before you and testify as to the type of operation he runs, where he was at the time, who was there at the time. Also involved would be police officers who had these premises on their beats, their patrol beats during the period that the Department was in the premises. Also, there may be Daily Reports as well as drink sheets that may go to impeach the Department's witnesses, and the Department's witnesses would be called as adverse witnesses to try to establish why conflicting testimony exists. But again, direct witnesses, persons who the agents said were with them, would be the key witnesses who could testify on behalf of the licensee as well as their own behalf, and the Hearing Officer should hear the testimony of any police officer who had this premises on their beat as to what they found as the general conduct of

> the premises. The Hearing Officer should listen to the people, such as bartenders or doormen who try to run a proper and orderly establishment. All of that is direct evidence and should come in to aid and assist you in rendering some decision. . . ." (RT 52-53).

On December 4, 1969, the hearing officer denied the motion to reopen the hearing, and ordered the matter submitted for decision based upon the evidence and stipulations received at the hearing on November 4, 1969 (Exhibit 7).

The Department's subsequent decision revoking petitioner's license was upheld on appeal before the California Alcoholic Beverage Control Appeals Board.

Both the California Court of Appeal and the California Supreme Court subsequently denied petitioner's applications for a hearing on the merits. These denials of hearing were rendered without opinion.

The Court of Appeal later denied petitioner's application for a stay pending disposition of his petition for a writ of certiorari before this Court.

On April 29, 1971, Associate Justice William O. Douglas denied petitioner's application for a stay of his license revocation pending action by this Court upon his petition.

Petitioner's license was picked up by the Department on April 1, 1971, and "Mike's Riverboat" has been closed since that time.

ARGUMENT

I

EVEN ASSUMING THAT PETITIONER HAS A CONSTITUTIONALLY-GUARANTEED RIGHT TO EFFECTIVE REPRESENTATION BY COUNSEL IN CIVIL ADMINISTRATIVE PROCEEDINGS, THERE IS NO SHOWING THAT HIS LEGAL REPRESENTATION HERE WAS IN FACT INADEQUATE.

Even in criminal proceedings, it is not enough for the convicted defendant to isolate claimed errors or omissions of his trial counsel and merely allege that they demonstrate ineffective assistance of counsel; he must go beyond speculation and demonstrate how, in fact, the conduct of counsel was prejudicial to his case. In the language of the California Supreme Court: "Defendant has the burden . . . of establishing his allegation of inadequate representation not as a matter of speculation but as a demonstrable reality." *People v. Reeves,* 64 Cal. 2d 766, 774, 51 Cal. Rptr. 691, 695, 415 P. 2d 35, 39, *cert. denied,* 385 U.S. 952 (1966) (stipulation to facts by defendant's counsel); *accord, People v. Fields,* 271 Cal. App. 2d 500, 503, 76 Cal. Rptr. 358, 360 (1969) ("It is a matter of speculation as to how [the uncalled witness] would have testified and the defendant has the burden of establishing inadequacy. . . .").

Petitioner criticizes the tack taken by his former counsel at the administrative hearing, but does not demonstrate the existence of alternative tactics that would have produced a different, more favorable result.

At no point in these proceedings—neither before the Department, the Alcoholic Beverage Control Ap-

peals Board, the California Court of Appeal, the California Supreme Court, nor before this Honorable Court—has petitioner set forth specifics, in terms of witnesses to be called and facts to be established, that would tend to establish the probability of a more favorable result than that obtained by the tactics used by his first counsel at the administrative hearing. He asks this Court to determine, based on nothing more than guess and surmise, that the tactics employed by his first counsel amounted to ineffective assistance of counsel.

Petitioner argues that the hearing officer should have refused to accept the offered stipulation of his first attorney, and directed him instead to proceed with cross-examination and presentation of evidence —a novel proposition for which petitioner offers no authority. In any case, assuming that the hearing officer was remiss in not telling petitioner's attorney how to try his case, that "error" was certainly remedied and rendered of no significance when the hearing officer later offered petitioner's new attorney an opportunity, on the motion to reopen the hearing, to set forth what evidence he would introduce at a reopened hearing. The hearing officer was obviously willing to give serious consideration to reopening the matter, provided he was shown that new evidence would be introduced at the reopened hearing which might materially alter the result. Petitioner's new counsel did not provide him with such a showing. Instead, he responded with a vague, shotgun type of proposal which did not name a single witness and

contained not a single positive statement of specific facts to which witnesses would testify. The hearing officer therefore denied the motion to reopen.

In so doing, the hearing officer was acting in accord with well-established California law that a ruling on a motion to reopen a case for the taking of additional evidence is committed to the sound discretion of the trial court, and will not be disturbed absent a clear abuse of discretion. *E.g., De Angeles v. Roos Bros., Inc.,* 244 Cal. App. 2d 434, 440-41, 52 Cal. Rptr. 783, 788 (1966); *Lee v. Dawson,* 44 Cal. App. 2d 362, 369 (1941). The party moving to reopen must set forth with sufficient particularity what new evidence he intends to introduce. *See Henderson v. Hart,* 122 Cal. 332, 334, 54 Pac. 1110, 1111 (1898); *Lee v. Dawson,* 44 Cal. App. 2d 362, 369 (1941). Petitioner failed to do this.

Petitioner's first counsel chose to stipulate that, if called, Department witnesses would testify in conformity with the Department investigative reports which he had previously reviewed. His apparent tactic was to challenge the legal sufficiency of such testimony to establish a cause for disciplinary action under the various California provisions proscribing B-girl activity. It may also be that he wished to avoid the "live" testimony of the witnesses, which could have been more damaging than the reports. This is a common consideration of trial counsel. *See, e.g., People v. Silva,* 266 Cal. App. 2d 165, 172-73, 72 Cal. Rptr. 38, 43 (1968).

Although this tactic later proved to be unsuccessful, it may very well be that this was the best of several very weak alternatives from which counsel had to choose. Petitioner certainly has not indicated how a different result would have followed had the stipulation not been entered into.

This choice of tactics by petitioner's first counsel—essentially a question of judgment—certainly does not render these proceedings, in the language of the Court of Appeals for the Ninth Circuit, "a farce and mockery of justice, shocking to the conscience of the court." *Washington v. United States,* 297 F. 2d 342, 344 (9th Cir. 1961) (per curiam), *cert. denied,* 370 U.S. 949 (1962); *accord, Kruchten v. Eyman,* 406 F. 2d 304, 312 (9th Cir. 1969); *Johnson v. United States,* 380 F. 2d 810, 812 (10th Cir. 1967). That is the test for constitutionally inadequate representation by counsel, and petitioner makes no showing that would bring his case within that standard.

II

THERE IS NO CONSTITUTIONALLY-GUARANTEED RIGHT TO EFFECTIVE REPRESENTATION BY COUNSEL IN CIVIL ADMINISTRATIVE PROCEEDINGS.

Petitioner argues that he has a constitutionally-guaranteed right in civil administrative proceedings to effective representation by counsel.

The only cases he cites for this proposition in his petition are cases from the criminal law, where the specific provisions of the Sixth Amendment and the

potential loss of life or liberty present in criminal cases have provided the basis for this Court's rulings, *e.g., Gideon v. Wainwright,* 372 U.S. 335 (1963), that criminal defendants are entitled not only to counsel of their own choosing, but to appointed counsel if they cannot afford their own attorney. The corollary which has followed from such holdings is that such a constitutionally-guaranteed right to legal representation is meaningless if that legal representation is such as to render the criminal proceedings a sham, a farce, and a mockery of justice. *See Kruchten v. Eyman,* 406 F. 2d 304, 312 (9th Cir. 1969); *Johnson v. United States,* 380 F. 2d 810, 812 (10th Cir. 1967); *Dodd v. United States,* 321 F. 2d 240, 243 (9th Cir. 1963).

Petitioner attempts to apply this corollary to a civil administrative proceeding, ignoring the holdings of numerous federal and state courts that there is no constitutional right to appointed counsel in such non-criminal proceedings, let alone a further constitutional right to effective legal representation. This denial of a right to appointed counsel, based upon the distinction between criminal and civil proceedings, has been made by numerous state and federal courts. *Nees v. Securities & Exchange Comm'n,* 414 F. 2d 211, 221 (9th Cir. 1969) (securities salesman barred from association with securities brokers or dealers); *Boruski v. Securities & Exchange Comm'n,* 340 F. 2d 991, 992 (2d Cir.) (per curiam), *cert. denied,* 381 U.S. 943, 944 (1965) (revocation of broker-dealer registration; denial of application for investment

adviser registration); *McGaughy v. Gardner,* 296 F. Supp. 33, 36 (E.D. La. 1967) (denial of disability claim under Social Security); *Borror v. Department of Investment,* 15 Cal. App. 3d 531, 539-40, 543, 92 Cal. Rptr. 525, 528-33 (1971) (revocation of real estate broker's license); *Staley v. Unemployment Ins. App. Bd.,* 6 Cal. App. 3d 675, 678, 86 Cal. Rptr. 294, 295 (1970) (denial of unemployment insurance claim); *Woodham v. Williams,* 207 So. 2d 320, 322 (Fla. Ct. App. 1968) (revocation of insurance agent's license); *Bancroft v. Board of Governors of Registered Dentists,* 202 Okla. 108, 210 P. 2d 666, 668 (1949) (revocation of dentists' license); *see Goldberg v. Kelly,* 397 U.S. 254, 270 (1970) (termination of welfare benefits); *cf. Harris v. Smith,* 418 F. 2d 899 (2d Cir. 1969) (proceedings to revoke Merchant Mariner's Document); *Hullom v. Burrows,* 266 F. 2d 547, 548 (6th Cir.), *cert. denied,* 361 U.S. 919 (1959) (civil suit by prisoner for damages).

In this civil administrative proceeding brought to discipline his liquor license, petitioner has no constitutional right to have the conduct of counsel of his own choosing assessed to determine whether that counsel adequately represented his interests.

CONCLUSION

Petitioner seeks review by this Court of a civil administrative decision revoking his liquor license. Although he charges his former counsel with incompetence, he points to nothing in the record which suggests that any result other than revocation was possible. He was given a chance to state what evidence he would produce at a reopened hearing, and submitted a clearly inadequate offer of proof.

Further, there is no due process right to adequate representation by counsel in these proceedings. The cases recognizing a constitutional right to adequate representation by counsel are all in the criminal law area, where the Sixth Amendment and potential loss of life or liberty entitle the criminal defendant to certain unique safeguards. Here, we are dealing with a civil administrative proceeding brought to discipline petitioner's liquor license.

We respectfully urge this Court to deny the petition for a writ of certiorari.

Dated, San Francisco, California,
May 13, 1971.

EVELLE J. YOUNGER,
Attorney General of the State of California,
DENNIS M. EAGAN,
Deputy Attorney General,
Attorneys for Respondents.

(Appendix Follows)

Appendix

State of California
Department of Alcoholic Beverage Control

CERTIFICATE OF DECISION
File 54266
Reg. 8274

It is hereby certified that a Hearing Officer of the Office of Administrative Procedure having submitted the attached proposed decision, and the Department of Alcoholic Beverage Control, having reviewed the findings of fact, determination of issues and recommended penalty, adopted said proposed decision as its decision in the case therein described on April 30, 1970.

A representative of the Department will call on you on or after June 18, 1970, to pick up the license certificate.

Sacramento, California
Dated: April 30, 1970

/s/ Dorothy Pierson
Hearing and Legal Unit

ABC-132 (1-67)

State of California
Department of Alcoholic Beverage Control

75 Folios

In the Matter of the Accusation against

Max Lipkin
dba Mike's Riverboat
55 Taylor Street
San Francisco, California,

On-Sale General,
Public premises

under the Alcoholic Beverage Control Act.

File. 54266
Reg. 8274 Licenses:

Time of Hearing: December 3, 1969

Place of Hearing: San Francisco, California

Reporter: Levy OSF-8360

Appearances:

For the Department:
Donald L. Tipton, Counsel

For the Respondent:
Rudolph A. Hoffman, Esq.
Suite 1203, Fox Plaza,
1390 Market Street
San Francisco, California

I hereby certify that the following constitutes my proposed decision in the above entitled matter as a result of the hearing held before me at the above time

and place, after due notice thereof having been given according to law, and I hereby recommend its adoption as the decision of the Department of Alcoholic Beverage Control.

PROPOSED DECISION

This matter came on regularly for hearing on November 4, 1969, at which time the Department was represented by Donald L. Tipton, Counsel, and respondent was present and represented by his attorney, R. Jay Engel. At said hearing, evidence was received and certain stipulations of the parties were accepted by the Hearing Officer and the matter submitted. Thereafter respondent, through his new attorney, Rudolph A. Hoffman, made a timely motion to reopen the hearing and to set aside the stipulations heretofore entered into by the parties.

On December 3, 1969, a hearing was held on motion of respondent, at which time the Department was represented by its attorney, Donald L. Tipton, and the respondent was personally present and represented by his attorney, Rudolph A. Hoffman. Evidence and oral argument was received on motion, and on December 4, 1969, the Hearing Officer made his Order denying the motion of the respondent to reopen the hearing and ordered the matter re-submitted on the evidence and stipulations received at the hearing on November 4, 1969. Thereafter respondent filed a Writ of Review with the Court of Appeal on the Hearing Officer's denial of respondent's motion to reopen the matter. On January 7, 1970, the Court

of Appeal, First District, Division Four, denied the petition (*Max Lipkin vs. Department of Alcoholic Beverage Control,* 1 Civil 27611). Both the Department of Alcoholic Beverage Control and the respondent requested opportunity to file briefs. Respondent's first brief was received on November 18, 1969, and marked Exhibit A for identification. Thereafter, respondent's new attorney requested permission to file another brief; the Department was given until March 16, 1970, in which to file its brief and the respondent was given until March 26, 1970, in which to file a brief. No brief was received from the Department nor did respondent's attorney file a second brief. The matter is therefore deemed to be submitted and, after due consideration, the Hearing Officer proposes the following decision:

Count I:

The following occurrences took place on the above-named licensed premises:

A. On January 7, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator R. Hicks to purchase an alcoholic beverage, namely: Champagne, for consumption by said female employee.

Employee: Known as "Judy", white, female, 22 years, 5' 2", 110 lbs., long brown hair.

B. On January 7, 1969, the above named licensee, at the above named licensed premises, did suffer

and permit female employee, hereinafter described, to solicit or encourage Investigator W. Moss to purchase an alcoholic beverage, namely: Champagne, for consumption by said female employee.

Employee: Known as "Judy", white, female, 22 years, 5′ 2″, 110 lbs., long brown hair.

C. On January 15, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator R. Hicks to purchase an alcoholic beverage on two separate occasions, namely: Champagne, for consumption by said female employee.

Employee: Known as "Judy", white, female, 22 years, 5′ 2″, 110 lbs., long brown hair.

D. On March 13, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator W. Moss to purchase an alcoholic beverage on two separate occasions, namely: Champagne, for consumption by said female employee.

Employee: Known as "Sandy", white, female, 25 years, 5′ 7″, 140 lbs., brown hair.

E. On March 19, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator W. Moss to purchase an alcoholic beverage, namely:

Champagne, for consumption by said female employee.

Employee: Known as "Sweet Lorraine", Negro, female, 25 years, 5′ 7″, black hair.

F. On March 20, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator R. Luca to purchase an alcoholic beverage, namely: Champagne, for consumption by said female employee.

Employee: Known as "Sandy", white, female, 25 years, 5′ 7″, 140 lbs., brown hair.

G. On March 26, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator C. Etter to purchase an alcoholic beverage on two separate occasions, namely: Champagne, for consumption by said female employee.

Employee: Known as "Stormie", white, female, 29 years, 5′ 6″, 115 lbs., shoulder length black hair.

H. On April 12, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator E. Cooper to purchase an alcoholic beverage on two separate occasions; namely: Champagne, for consumption by said female employee.

Employee: Known as "Stormie", white, female, 29 years, 5′ 6″, 115 lbs., black hair.

I. On April 12, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator C. Etter to purchase an alcoholic beverage, namely: Champagne, for consumption by said female employee.

Employee: Known as "Cecilia", Negro, female, 25 years, 5′ 5″, 115 lbs., black hair.

J. On April 26, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to solicit or encourage Investigator E. Cooper to purchase an alcoholic beverage, namely: Champagne, for consumption by said female employee.

Employee: Known as "Judy", white, female, 22 years, 110 lbs., 5′ 4″, short black hair.

Count II:

The following occurrences took place on the licensed premises:

A. On January 7, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator R. Hicks, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Judy", white, female, 22 years, 5′ 2″, 110 lbs., long brown hair.

B. On January 7, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator W. Moss, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Judy", white, female, 22 years, 5′ 2″, 110 lbs., long brown hair.

C. On January 7, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: a mixed alcoholic drink, from a male patron, hereinafter described, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Linda", white, female, 26 years, 5′ 6″, 125 lbs., long reddish-brown hair.

Male Patron: White, male, 30 years, 6′ 1″, 190 lbs., dark brown hair, wearing Navy dress blues, 2nd class petty officer of the USS Proteus.

D. On January 15, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator R. Hicks, said

alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Judy", white, female, 22 years, 5' 2", 110 lbs., long brown hair.

E. On March 13, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne from Investigator W. Moss, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Sandy", white, female, 25 years, 5' 7", 140 lbs., brown hair.

F. On March 13, 1969, the above named licensee, at the above named licensed premises, did suffer and permit two female employees, hereinafter described, to accept alcoholic beverages, namely: Champagne, from a male patron, hereinafter described, said alcoholic beverages being intended for the consumption of the two female employees.

Employee #1: Known as "Judy", white, female, 22 years, 5' 2", 110 lbs., long brown hair.

Employee #2: White, female, 22 years, 5' 7", 115 lbs., long dark brown hair.

Male Patron: White, male, 25 years, 5' 10", 175 lbs., brown hair, wearing U.S. Army dress greens with sergeant stripes.

G. On March 19, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter de-

scribed, to accept an alcoholic beverage, namely: Champagne, from Investigator W. Moss, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Sweet Lorraine", Negro, female, 25 years, 5′ 7″, black hair.

H. On March 20, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator R. Luca, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Sandy", white, female, 25 years, 5′ 7″, 140 lbs., brown hair.

I. On motion of the Department, this subcount was stricken.

J. On March 26, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator C. Etter, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Stormie", white, female, 29 years, 5′ 6″, 115 lbs., shoulder length black hair.

K. On April 12, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely:

Champagne, on two separate occasions, from Investigator E. Cooper, said alcoholic beverages being intended for the consumption of said female employee.

Employee: Known as "Stormie", white, female, 29 years, 5′ 6″, 115 lbs., shoulder length black hair.

L. On April 12, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator C. Etter, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Cecilia", Negro, female, 25 years, 5′ 5″, 115 lbs., black hair.

M. On April 26, 1969, the above named licensee, at the above named licensed premises, did suffer and permit female employee, hereinafter described, to accept an alcoholic beverage, namely: Champagne, from Investigator E. Cooper, said alcoholic beverage being intended for the consumption of said female employee.

Employee: Known as "Judy", white, female, 22 years, 110 lbs., 5′ 4″, short black hair.

Licensee's Previous Record:

Licensed as above since June 8, 1967. No record of disciplinary action. Also licensed at various locations in San Francisco.

Determination of Issues Presented:

Grounds for suspension or revocation of the license exist and continuance of such license would be contrary to public welfare and morals within the meaning of Article XX, Section 22, State Constitution, and Business and Professions Code Section 24200(a).

Additional grounds for suspension or revocation exist under Business and Professions Code Sections 24200(a) and 24200(b) in that respondents have violated or permitted the violation of Business and Professions Code Section 24200.5(b) as to Count I, subcounts A, B, C, D, E, F, G and H; and Business and Professions Code Section 25657 as to Count I, subcounts I and J; and have violated or permitted the violation of Title 4, California Administrative Code, Rule 143, as to Count I, subcounts A, B, C, D, E, F, G, H, I and J, and as to Count II, subcounts A, B, C, D, E, F, G, H, I, J, K, L and M. In addition, respondents have committed the type of activity which is proscribed by Penal Code Section 303a as to Count I, subcounts A, B, C, D, E, F, G, H, I and J.

Penalty:

The license is revoked on each of Counts I and II, each separately and severally considered.

Dated at: San Francisco, California.
March 31, 1970.

/s/ George R. Coan
Hearing Officer of the Office of
Administrative Procedure,
State of California.